IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2773 OF 1984

United Caroon India Ltd. & Anr. ...Plaintiffs

vs.

American President Lines ...Defendant

Mr.M.P.S.Ro i/b M/s.M.V.Kini & Co.for the Plaintiffs
H.Toor i/b Crawford Bayley & Co.for the Defendant

CORAM: A.S.OKA,J.
DATE : JULY 19,2007

JUDGMENT:

1. The submissions of the learned counsel for the parties were heard yesterday.

2. The Suit is filed by the Plaintiffs for recovery of a sum of Rs.05,27,625.75/- together with interest thereon at the rate of 18% per annum from the date of the filing of the Suit till the date of the decree and further interest on said amount at the rate of 18% per annum at such other rate as the court may fix.

3. The case of the Plaintiffs in brief is that the first Plaintiff imported from U.S.A. into Bombay 1425 numbers of fibre glass filter bags and 1425 pairs of stainless steel snaplock clamps (hereinafter referred to as the said consignment) for total value of C & F Bombay at US$ 1,13,695.58/-. The Plaintiffs acquired the said consignment

from M/s Menardi Southern Corporation, California, under the invoice dated 18th August 1983. On or about 24th August 1983, the first Plaintiffs' said shippers entrusted the said consignment duly packed into 487 cartons containing fibreglass filter bags and stainless steel snaplock clamps (475 cartons fibre glass filter bags three in each carton and 12 cartons containing stainless steel snaplock clamps) to the defendants American President Lines Ltd. The consignment was entrusted to the Defendants and/or their agents and/or servants in good order and sound condition and securely packed condition for carriage by sea from the Port Los Angeles to the Port of Bombay by a ship m.v. "President Medison". On receiving the said consignment clean on board, and freight in respect of the same, the master of the said ship issued a receipt in the form of a through clean Bill of Lading dated 24th August 1983 by which the said consignment of 487 cartons was accepted. All the shipping documents of title in respect of the said consignment was routed through Union Bank of India, Mumbai. The first Plaintiff received the shipping documents from the said bank duly endorsed in their favour on payment of full value of the said consignment and thus the first Plaintiffs became entitled to receive the said consignment as the owners thereof.

4. Though the Bill of Lading was issued for carriage of the said consignment by the said m.v. President Medison, it

appears that the defendants at some point of time transhipped the said consignment on another ship by the name "Tackler Arabia". The said ship arrived at the Port of Bombay on or about 9th November 1983 and berthed at shed No.10/11 of Victoria Dock on the same day. The first plaintiff had appointed M/s.Natumal Naval as their clearing agent for performing the necessary formalities and taking delivery of the said consignment. The said clearing agent filled the bill of entry and after completing the customs formalities approached the Bombay Port Trust for taking delivery. According to the case of the Plaintiffs, the cartons were in the container. The said container was destuffed in presence of the officials of the Bombay Port Trust and the custom authorities and it was found that the container contained only 282 cartons which were destuffed from the container. According to the case of the plaintiffs, the Bombay Port Trust issued a short landing certificate on 19th January 1984 stating that 205 cartons containing fibre glass filter bags and stainless steel snap lock clamps have been short landed from the ship. The Assistant Collector of customs by a certificate dated 12th December 1983 certified the short landing. The first plaintiffs by a letter dated 21st January 1984 addressed to the defendants placed on record the fact of short landing and also forwarded their claim for the value of the short landed material and requested the defendants to settle the claim. According to the plaintiffs, the defendants

by their letter dated 13th February 1984 denied their liability. The Advocate for the first plaintiffs issued a letter dated 28th September 1984 addressed to the defendants through their agent in Bombay and called upon the defendants to settle the claim. As no reply was received to the said letter, the Advocate for the first Plaintiff by a telex dated 2nd October 1984 addressed to the defendants at California, U.S.A. once again called upon the defendants to settle the claim. However, the claim was not settled. In fact Defendant's Agent by letter dated 11th October 1984 repudiated the claim of the Plaintiff.

5. According to the case of the plaintiffs, while the said consignment was in transit, it was insured with the second plaintiff under the policy dated 28th November 1985 in the sum of Rs.12,75,000/-. As the claim of the plaintiffs was not settled by the defendants, the first plaintiffs made a claim to the second plaintiffs and accordingly, the second plaintiffs paid a sum of Rs.5,37,635.75 to the first plaintiffs. Against the said payment, the first plaintiffs executed a letter of subrogation and special power of attorney dated 6th November 1984 in favour of the second Plaintiff.

6. According to the case of the plaintiffs the said consignment was entrusted to the Defendants at Los Angeles in good order and condition and at that time it was properly and

securely packed. It is contended that the defendants failed in their statutory duty and handed over the consignment in a negligent manner and thereby the first plaintiffs suffered a loss.

7. The suit was contested by the defendants by filing a written statement. One of the contentions raised was that Bill of Lading dated 24th August 1983 was not validly endorsed in favour of the plaintiffs. The second contention raised was that the goods were stuffed in the container by the first plaintiffs' shipper at the Port of Los Angeles and the said container had been sealed by the first plaintiffs' shipper. According to the defendants they had accepted the said container containing the consignment as the "Shipper's Load and Count" and the said Bill of Lading dated 24th August 1983 has been worded accordingly. According to the case of the defendants the container was accepted and delivered with its seal intact. According to the defendants, the container was delivered in Port of Bombay with its seal intact. The defendants were absolved from all the liabilities in respect of the said goods carried in the said container.

8. On 7th June 2005, the issues were framed which read thus :

"1. Whether the Plaintiffs prove that the suit consignment was not delivered by the Defendants and there was a

shortlanding of 205 cartons ?

2. Whether the Plaintiffs prove that they have suffered loss and damage due to the reason of the breach of contract and breach of duty on the part of the Defendants ?

3. Whether the Plaintiffs prove that either the Plaintiffs No.1 and 2 have any cause of action against the Defendants ?

4. Whether the Plaintiffs prove that the Suit consignment was not delivered by the Defendants with the seals intact ?

5. Whether the Plaintiffs prove that the Defendants did not carry the suit consignment on the basis of "shippers load and count" or that the suit bill of lading does not evidence the same ?

6. Whether the terms and conditions of the suit Bill of Lading are null and void and of no effect as alleged or for the reason alleged ?

7. Whether the Plaintiffs prove that the defendants were bound and liable to carry the suit consignment only on

the vessel "PRESIDENT MEDICON" and could not have transhipped the same on any other vessel as alleged ?

8. Whether the Plaintiffs prove that the Defendants handled the said consignment in a negligent and/or careless manner and failed to safely unload the said consignment at Bombay ?

9. Whether the plaintiffs prove that the plaint is filed within the period of limitation ?"

9. The Plaintiffs led evidence of Mr.P.Ramnathan, Company Secretary and Senior Manager-Admistration of the first Plaintiffs. The Plaintiffs also adduced evidence of Mr.A. Periera, Assistant Divisional Manager of the second Plaintiffs. The evidence was led in the form of Affidavits in lieu of of examination in chief of the witnesses. The witnesses were cross examined before the Commissioner appointed by this Court.

10. The learned Counsel for the Plaintiffs has invited my attention to the evidence on record and in particular the short landing certificate dated 19th January 1984 (Exh.P-3) and certificate of examination issued by the Assistant Collector of customs, Bombay dated 12th December 1983 (Exh.P-4). He also invited my attention to the insurance

policy dated 28th November 1983 (Exh.P-2). He submitted that the documents at Exh.P-3 and P-4 clearly establish the case of the plaintiffs of short landing. He invited my attention to the copy of Bill of Lading (Exh.P-5) and submitted that the Bill of Lading shows that the total 487 cartons were entrusted to the defendants for shipment. He submitted that there was negligence on the part of the defendants as result of which there is short landing to the extent shown in the short landing certificate as well as in the certificate of examination. He, therefore, submitted that the plaintiffs are entitled to a decree.

11. The learned Counsel for the defendants submitted that the consignment was stuffed in container which was sealed and the defendants had accepted the container as shipper’s "Load and Count". He pointed out that the bill of lading clearly establishes the said fact. He submitted that the container allegedly containing 487 cartons was delivered to the defendants by M/s.Avio International Forwarders as forwarding agents of M/s.Menardi Southern Corporation, California, U.S.A. He submitted that the container landed in the Port of Bombay in a sealed condition. He submitted that the short landing certificate and certificate of examination (Exh.P-2 and P-3 respectively) have not been proved in accordance with law. He, therefore, submitted that the suit deserves to be dismissed.

12. I have perused the affidavits of evidence and the cross examination of the witnesses. Perusal of the Affidavit in lieu of examination in chief of Mr.P.Ramnathan as well as the affidavit in lieu of examination-in-chief of Mr.A.Periera shows that no attempt has been made by both of them to prove the short landing certificate dated 19th January 1984 as well as certificate of examination dated 12th December 1983. Both the witnesses were not the authors of the documents and they could not have proved the contents of the documents. There is nothing on record to show that the said two documents were admitted by the defendants. Therefore, it was necessary for the Plaintiffs to prove both the said documents. The short landing certificate could have been proved by examining the concerned officer of the Bombay Port Trust and the certificate of examination could have been proved by examining the concerned Officer of the customs. The Plaintiffs have not examined the representative of their clearing agents who was present at the time of destuffing of the container. Therefore, they have not established that the seal on the container was not intact. Perusal of the evidence of the witnesses of the first Plaintiffs shows that the only documentary evidence of short landing is in the form of aforesaid two documents. Both the documents are not duly proved and therefore, the same are not admissible in evidence.

13. It will be necessary to refer to the cross examination of Mr.P.Ramnathan who was examined on behalf of the first Plaintiffs. He candidly admitted that M/s.Menardi lodged 487 cartons in a container and at that time a representative of neither the first Plaintiffs nor the second Plaintiffs was present. When a specific question was asked to him as to how he can say that 487 cartons were loaded in the container when representative of the first plaintiffs was not present, his answer was "I have no idea". Thus, from the said evidence, it appears that the first Plaintiff is unable to establish that 487 cartons were properly stuffed in the container which was entrusted to the defendants. There does not seems to be any dispute that certain cartons were stuffed in the container and the container was sealed while handing over the same to the defendants for shipment. It must be noted here that even assuming that the certificate of examination is proved, the said document allegedly signed by the officer of the Customs records that the seal of the container was found intact. It is, therefore, crystal clear that the Plaintiffs have failed to prove that 487 cartons were stuffed in the container which were entrusted to the Defendants and that at the time of destuffing, only 282 cartons were found. Thus, the allegation of short landing is not proved by the Plaintiffs.

14. The first Plaintiffs have issued a letter of subrogation and special power of attorney in favour of second Plaintiffs.

The date of policy of marine insurance is 28th November 1983. It is the case of the first plaintiffs that the consignment was insured in transit. It will be necessary to go back to the evidence of the witness examined on behalf of the first Plaintiffs. In the cross examination, he admitted that the ship m.v. Arabia arrived on 9th November 1983 at Port of Bombay. It must be also noted here that the said witness admitted that the container in which the cartons were stuffed was opened on 21st November 1983. Thus, it is obvious that the policy of insurance was issued subsequent to the delivery of the consignment in Mumbai and also subsequent to the opening of the container which took place on 21st November 1983. It was tried to be submitted that the proposal for insurance was submitted earlier. However, the policy has been issued on 28th November 1983. This is one more ground on which the claim of the second plaintiffs cannot be accepted.

15. Hence, the first issue will have to be answered against the Plaintiffs. Similarly the 2nd, 4th and 8th issues will have to be answered against the Plaintiffs. The third issue will have to be answered in negative. The other issues need not be answered as the suit must fail as a result of answer to the aforesaid issues.

16. Hence, I pass the following order :

. The suit is dismissed. The Plaintiffs are directed to pay costs of the suit to the defendants.

JUDGE